

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JUSTINE ERSKINE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 22-381-GBW
)	
TRUMAN MEARS, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

At Wilmington, this 18th day of August 2025, having reviewed and considered Defendants’ motion to dismiss certain Plaintiffs for lack of prosecution (D.I. 186), Plaintiff Justin Erskine’s first and second motions to appoint counsel (D.I. 191, 203), and Plaintiff Erskine’s motion for leave to supplement the amended complaint (D.I. 201);

WHEREAS Defendants move to dismiss Plaintiffs Kevin Brownlee, Michael Cummings, Lateef Dickerson, Michael Ellingsen, Jerry McGinnis, Donald McMillan, Bryan A. Neal, Phillip M. Smith, Gerrin Wallace, and Christopher Waterman for failure to respond to Defendants discovery requests (*see* D.I. 186);

WHEREAS Defendants assert, and Plaintiff’s do not contest, that “[t]o date, Defendants have received no discovery responses, or responses generally, from” seven of the ten above named Plaintiffs, specifically, Plaintiffs Cummings,

Dickerson, McGinnis, Neal, Smith, Wallace, and Waterman (*id.* at 4; *see also* D.I. 198 at 2 (stating that these seven Plaintiffs had “still not provided discovery responses or responded to the Motion” to dismiss at the time Defendants replied in support of the motion to dismiss)); and

WHEREAS Defendants also assert that they received insufficient discovery responses from three of the above named Plaintiffs, specifically Plaintiffs Brownlee, Ellingsen, and McMillan (*see* D.I. 186 at 5; D.I. 198 at 2-3);

THEREFORE, on this 18th day of August 2025, IT IS HEREBY ORDERED:

1. Defendants’ motion to dismiss Plaintiffs for lack of prosecution (D.I. 186) is **GRANTED** in part, and **DENIED** in part:

a. Plaintiffs Michael Cummings, Lateef Dickerson, Jerry McGinnis, Bryan A. Neal, Phillip M. Smith, Gerrin Wallace, and Christopher Waterman are **DISMISSED** with prejudice as parties to this case;

b. **On or before September 19, 2025**, Plaintiff Kevin Brownlee shall respond to Defendants’ December 11, 2024 request for revised responses to four discovery requests;

c. **On or before September 19, 2025**, Plaintiff Donald McMillan shall respond to Defendants’ October 18, 2024 request for complete and proper discovery responses;

d. **On or before September 19, 2025**, Plaintiff Michael Ellingsen shall respond to Defendants' December 3, 2024 request for revised responses to three discovery requests; and

e. **Plaintiff Brownlee, Ellingsen, or McMillan's failure to comply with this Order may result in dismissal with prejudice;**

2. Plaintiff Justin Erskine's motions to appoint counsel (D.I. 191, 203) are **DENIED**, without prejudice to renew at a later stage of this case, because the motions do not show a likelihood of substantial prejudice, warranting exercise of this Court's discretionary power to appoint counsel at this time, this case does not present complex issues, and Plaintiff Erskine has demonstrated sufficient ability to present his claims and represent himself during the discovery stage; and

3. Plaintiff Erskine's motion for leave to supplement the amended complaint to set forth conditions of confinement he has been subjected to since the filing of the amended complaint (D.I. 201) is **DENIED Without Prejudice** to Plaintiff raising new claims on his own behalf in a separate civil action.



The Honorable Gregory B. Williams
United States District Judge